

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

**FLEET ENGINEERS, INC.**

a Michigan Corporation,

Plaintiff

v.

**MUDGUARD TECHNOLOGIES, LLC**

a Tennessee limited liability company,

**TARUN SURTI**

an Individual,

Defendants.

Case No. 1:12-CV-1143

Hon. Paul L. Maloney

**FINAL PRETRIAL ORDER**

A final pretrial conference was held on the 8th day of Setpember, 2021 at 12:00 p.m.

Appearing for the parties as counsel were:

For Plaintiff Fleet Engineers, Inc. ("Fleet"): G. Thomas Williams of McGarry Bair PC

For Defendant Tarun Surti ("Mr. Surti"): Tarun Surti, *pro se*.

**1. EXHIBITS**

The following exhibits will be offered by the plaintiff and the defendant:

**A. PLAINTIFF'S EXHIBIT LIST**

Plaintiff's exhibit list is set forth below, complete with Defendant's objections and

Plaintiff's response to Defendant's objections:

<b>Stipulated Exhibit #</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
1	U.S. Patent No. 8,146,949		
2	'949 Patent File History (MUDGUARD000001-000131)		
3	U.S. Patent No. RE44,755		
4	Distributor Agreement (FLEET000022-28)		
5	May 8, 2012 Surti Email (FLEET000885)		
6	May 8, 2012 Hill Email (MUDGUARD000252-253)		
7	May 9, 2012 Surti Email (FLEET000886-888)		
8	June 28, 2012 Wright Letter (FLEET000029-30)		
9	June 29, 2012, McGarry Letter (FLEET000031)		
10	July 23, 2013 Wright Email (FLEET000032-40)		
11	July 24, 2012 McGarry Email (FLEET000041)		
12	July 27, 2012 Wright Email (FLEET000042)		
13	September 4, 2012 McGarry Letter (FLEET000046-49)		
14	September 27, 2012 Wright Email (FLEET000050-52)		
15	October 15, 2012 Open Letter of Violation (FLEET000008-9)		
16	Twitter Posts (FLEET000010-14)		
17	LinkedIn (FLEET000015-21)		
18	Fleet Sales Report (FLEET001317)		
19	Fleet Component Packaging Specification		

<b>Stipulated Exhibit #</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
	(FLEET000954)		
20	Fleet Production Instructions (FLEET000953)		
21	HS Die & Engineering Master Mold Run Set Up (FLEET000955)		
22	HS Die & Engineering In-Process Inspection Sheet (FLEET000956)		
23	Chase Plastics Property Data Sheet (FLEET000958)		
24	PolyOne Product Data Sheet (FLEET000959)		
25	Fleet CO Form – Injection Mold Tooling (FLEET000962)		
26	Invoices for AeroFlap Orders (FLEET000972-981)		
27	Fleet Catalog Pages (FLEET000001-2)		
28	AeroFlap Advertisement (FLEET000003)		
29	AeroFlap Advertisement (FLEET000004-5)		
30	Fleet 02/22/2012 Test Report (FLEET000948-952)		
31	Fleet 02/23/2012 Test Report (FLEET000947)		
32	November 7, 2012 Surti Email (FLEET001019)		
33	December 12, 2013 Hill Email (FLEET001014-1015)		
34	January 4, 2013 Hill Email (FLEET001055)		
35	January 4, 2013 .mov file (FLEET001056)		
36	November 19, 2012 Video (FLEET000968)		

<b>Stipulated Exhibit #</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
	37 November 19, 2012 Video (FLEET000969)		
	38 AeroFlap Smoke UofM2 Video (FLEET000970)		
	39 VFlap Video (FLEET000971)		
	40 AeroFlap Smoke UofM2, November 12, 2012 - <a href="https://www.youtube.com/watch?v=jcgL7_oHjjU">https://www.youtube.com/watch?v=jcgL7_oHjjU</a>		
	41 Frozen AeroFlap, June 14, 2013 - <a href="https://www.youtube.com/watch?v=Kc4Q9ybWwVk">https://www.youtube.com/watch?v=Kc4Q9ybWwVk</a>		
	42 AeroFlap vs the competition at highway speeds with no anti-sail bracket, June 13, 2012 - <a href="https://www.youtube.com/watch?v=Nnc5AIlgEKw">https://www.youtube.com/watch?v=Nnc5AIlgEKw</a>		
	43 AeroFlap at 72mph, April 3, 2012 - <a href="https://www.youtube.com/watch?v=eb2sH_VtO2o">https://www.youtube.com/watch?v=eb2sH_VtO2o</a>		
	44 January 26, 2013 U of M Wind Tunnel Testing (FLEET001064-1065)		
	45 February 12, 2013 AeroFlap Testing Study (FLEET001069-1081)		
	46 July 11, 2013 Hill Email (FLEET001009-1013)		
	47 August 30, 2013 AeroFlap Results (FLEET001095-1108)		
	48 September 5, 2013 Hill Email (FLEET001241-1245)		
	49 March 28, 2013 U of M Testing (FLEET001270-1274)		
	50 January 20, 2014 Hill Email (FLEET000991)		
	51 2014 Product Testing (FLEET000992)		

<b>Stipulated Exhibit #</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
52	AeroFlap Technical Drawings (FLEET001289-1316)		
53	V-Flap Drawing (MUDGUARD000146)		
54	V-Flap Advertising (MUDGUARD000150)		
55	Press Release (MUDGUARD000181)		
56	October 2, 2009 Surti Email (MUDGUARD000210-21)		
57	October 23, 2012 V-Flap is a Better Choice (MUDGUARD000233-234)		
58	September 1, 2010 Gerst Email (FLEET000053-55)		
59	April 20, 2010 Surti Email (FLEET000142)		
60	April 20, 2010 Surti Email (FLEET000143-144)		
61	April 20, 2010 Surti Email (FLEET000148-151)		
62	April 21, 2010 Hill Email (FLEET000044)		
63	April 21, 2010 Surti Email (FLEET000152-157)		
64	April 22, 2010 Suti Email (FLEET000158)		
65	May 27, 2010 Surti Email (FLEET000175-180)		
66	June 4, 2010 Surti Email (FLEET000188-195)		
67	June 4, 2010 Surti Email (FLEET000196-204)		
68	June 4, 2010 Surti Email (FLEET000205-214)		
69	June 10, 2010 Surti Email (FLEET000232-240)		
70	July 2, 2010 Surti Email (FLEET000729)		

<b>Stipulated Exhibit #</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
71	July 6, 2010 Surti Email (FLEET000730)		
72	July 6, 2010 Surti Email (FLEET000731-732)		
73	July 8, 2010 Surti Email (FLEET000736-739)		
74	July 16, 2010 Surti Email (FLEET000745-747)		
75	July 16, 2010 Surti Email (FLEET000751-754)		
76	July 21, 2010 Surti Email (FLEET000759-763)		
77	July 21, 2010 Surti Email (FLEET000766)		
78	July 22, 2010 Surti Email (FLEET000769-771)		
79	July 30, 2010 Surti Email (FLEET000784)		
80	August 10, 2010 Gerst Email with Attachments (FLEET000786, Dep. Ex. 12)		
81	August 13, 2010 Surti email (FLEET000790)		
82	August 13, 2010 Surti Email (FLEET000791-792)		
83	August 14, 2010 Surti Email (FLEET000793-795)		
84	August 19, 2010 Surti Email (FLEET000802)		
85	August 27, 2010 Surti Email (FLEET000090)		
86	September 1, 2010 Gerst Email (FLEET000900-905, Dep. Ex. 14)		
87	September 1, 2010 Gerst Email (FLEET000905-918, Dep. Ex. 15)		
88	September 7, 2010 Gerst Email with Attachments (FLEET000806)		

<b>Stipulated Exhibit #</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
89	September 7, 2010 Surti Email (FLEET000807-808)		
90	September 8, 2010 Surti Email (FLEET000811-813)		
91	September 14, 2010 Surti Email (FLEET00059-62, Dep. Ex. 19)		
92	September 14, 2010 Surti Email (FLEET0000817-818, Dep. Ex. 18)		
93	September 16, 2010 Surti Email (FLEET000821-823)		
94	September 17, 2010 Surti Email (FLEET000824-827, Dep. Ex. 21)		
95	September 22, 2010 Surti Email (FLEET000829-831, Dep. 22)		
96	September 23, 2010 Surti Email (FLEET000832-837, Dep. Ex. 23)		
97	September 24, 2010 Surti Email (FLEET000838-844)		
98	September 27, 2010 Surti Email (FLEET000845-853, Dep. Ex. 24)		
99	September 30, 2010 Surti Email (FLEET000860-864)		
100	September 30, 2010 Surti Email (FLEET000865-871)		
101	October 11, 2010 Surti Email (FLEET000872-873)		
102	October 12, 2010 Surti Email (FLEET000877-879)		
103	Fleet Smart Flap Advertising (FLEET000006-7)		
104	November 28, 2010 Suti Email (FLEET000884)		
105	24 x 24 AeroFlap		
106	24 x 30 AeroFlap		
107	24 x 36 Aerofalp		

**B. DEFENDANT'S EXHIBIT LIST**

Defendant's exhibit list is set forth below, complete with Plaintiff's objections and

Defendant's response to Plaintiff's objections:

<b>Stipulated</b>	<b>Exhibit #</b>	<b>ECF No Or Document No.</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
	A	FLEET000148	Walter Hill Email		
	B	FLEET000149	Surti Email		
	C	FLEET000153	Walter Hill Email		
	D	FLEEET000152	Surti Email		
	E	FLEET000160 & MUDGUARD0001 32-133	Surti Email		
	F	FLEET000194	Surti Email		
	G	FLEET000167-168	Walter Hill Email		
	H	FLEET000185	Walter Hill Email		
	I	FLEET000171	Walter Hill Email		
	J	FLEET000197	Walter Hill Email		
	K	FLEET000232-233	Walter Hill Email		
	L	FLEET000729	Walter Hill Email		
	M	FLEET000764-765	Surti Email		
	N	FLETT000768	Walter Hill Email		
	O	FLEET000772	Surti Email		

<b>Stipulated</b>	<b>Exhibit #</b>	<b>ECF No Or Document No.</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
	P	FLEET000779	Surti Email		
	Q	FLEET000778	Surti Email		
	R	FLEET 000892 & MUDGAUARD 000146-147	Ray Steinhaur Email		
	S	FLEET000857	Surti Email		
	T	FLEET000069-70	Joe Papparella Email		
	U	FLEET000946	Joe Papparella Report Email		
	V	FLEET000111	Walter Hill Email		
	W	FLEET000110	Surti Email		
	X	FLEET000113	Surti Email		
	Y	FLEET000132	Surti Email		
	Z	FLEET000872-874	Surti Email		
	AA	FLEET000877-880	Surti Email		
	AB	FLEET000096-97	Gary Roberts Email		
	AC	FLEET000090	Surti Email		
	AD	FLEET000053	Tom Gerst Email		
	AE	SEE ATTACHED	Surti FILE PHOTO	FRE 901, 402; FRCP 37	
	AF	FLEET000885	Surti Email		
	AG	FLEET000886-887	Walter Hill Email		
	AH	FLEET000886	Surti Email		

<b>Stipulated Exhibit #</b>	<b>ECF No Or Document No.</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
AI	ECF NO. 1 PAGEID 35-64	Communication between Counsels		
AJ	FLEET000962	Fleet Purchase Order for Mold		
AK	FLEET001308 & 1309	033-08002 & 033-08004 Part Drawing		
AL	FLEET001307	033-08001 Part Drawing		
AM	FLEET000953-957	Injection Molder Report		
AN	FLEET000947-952	Thomas Gerst Report		
AO	ECF NO. 1	Complaint	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
AP	ECF NO. 28	Markman Brief by Plaintiff	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
AQ	ECF NO. 60	Claim Construction Opinion	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
AR	ECF NO. 115	Surti file 2 <sup>nd</sup> Amendments Counterclaims	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
AS	FLEET001316	Fleet part drawing prepared by Mr. Anderson	FRE 401, 402 – irrelevant; FRE 403 – confusion of	

<b>Stipulated</b>	<b>Exhibit #</b>	<b>ECF No Or Document No.</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
				issues; misleading	
	AT	9,004,538 HISTORY	Fleet filed for patent protection	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	AU	9,004,538	Fleet receives patent	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	AV	ECF NO. 169	Affidavit of Wesley Eklund	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	AW	ECF NO. 191	Surti Motion for Summary Judgement	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	AX	ECF No. 236	Opinion & Order by this Court	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	AY	ECF – MISSING NO.	Surti Appeal to Federal Circuit Court	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	AZ	ECF NO. 278	Opinion of Federal Court	FRE 401, 402 – irrelevant; FRE 403 –	

<b>Stipulated</b>	<b>Exhibit #</b>	<b>ECF No Or Document No.</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
				confusion of issues; misleading	
	BA	ECF NO. 288	Surti 1 <sup>st</sup> motion	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BB	ECF NO. 293	Motion denied	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BC	ECF NO. 299	Order clarifying patent claims in dispute	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BD	ECF NO. 300	Surti 2 <sup>nd</sup> motion	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BE	ECF NO. 306	Status request by Surti	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BF	ECF NO. 309	Status request by Surti	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BG	ECF NO. 315	Surti motion denied by this Court	FRE 401, 402 – irrelevant;	

<b>Stipulated</b>	<b>Exhibit #</b>	<b>ECF No Or Document No.</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
				FRE 403 – confusion of issues; misleading	
	BH	ECF NO. 323	Motion to leave by Surti	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BI	ECF NO. 328	Order denying the Motion	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BJ	AEROFLAP	Muflap samples		
	BK	VFLAP	Mudflap samples		
	BL	ECOFLAP	Mudflap samples	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading; FRCP 37 – late disclosure, reliance not disclosed	
	BM	FLEET000963-967	Indemnity Agreement with GreatDane - Surti Customer		
	BN	SEE ATTACHED	Proof of GreatDane as Surti Customer	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	

<b>Stipulated</b>	<b>Exhibit #</b>	<b>ECF No Or Document No.</b>	<b>Document Description</b>	<b>Objections</b>	<b>Proponent's Response to Objections</b>
	BO	INFORMATION ON WEB	Fleet is accused of patent violation by Oroville Firm	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading; FRCP 37 – late disclosure, reliance not disclosed	
	BP	Expert testimony and Rebuttal-Fleet	Philip W. Kline	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BQ	Expert testimony and Rebuttal-Fleet	Thomas N. Young	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	
	BR	Water Spray Bottle	To prove water is blocked by AeroFlap	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading; FRCP 37 – late disclosure, reliance not disclosed	
	BS	All ECFs	As needed	FRE 401, 402 – irrelevant; FRE 403 – confusion of issues; misleading	

## 2. UNCONTROVERTED FACTS

The parties have agreed that the following may be accepted as established facts:

1. U.S. Patent No. 8,146,949 ("the '949 Patent") was filed for on September 2, 2009, and issued by the U.S. Patent & Trademark Office on April 3, 2012.
2. Tarun N. Surti is the sole inventor on the '949 Patent.
3. The '949 Patent was reissued as U.S. Patent No. RE44,755 ("the '755 Patent").
4. The '755 Patent was filed for on March 18, 2013, and issued by the U.S. Patent & Trademark Office on February 11, 2014.
5. The '755 Patent has replaced the '949 Patent.
6. This Court entered summary judgment in favor of Mr. Surti and Fleet's claim that the '755 Patent was invalid was dismissed. ECF 236
7. Fleet did not appeal this Court's summary judgment finding that the '755 Patent is valid.
8. The '755 Patent lapsed on April 4, 2016, for failure to pay the first maintenance fee.
9. A Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent was filed and the '755 Patent was reinstated on May 17, 2018.
10. Fleet introduced its AeroFlap product at a trade show in February 2012.
11. Fleet received U.S. Patent No. 9,004,538 on April 14, 2015, for its AeroFlap brand mud flap. The Provisional patent application no. 61/655,693 was filed on June, 5, 2012, three months after Surti received his '949 Patent.
12. As construed by this Court in its Summary Judgment Opinion, "A vane must protrude or rise from the rear wall of the mud flap." ECF No. 236, PageID.2834.

13. "Vertically extending" has been construed by this Court in its Markman Opinion to mean "perpendicular or at a 90-degree angle to the road surface." ECF No. 60, PageID.395.

14. The '755 Patent does not require the vanes and channels to run the length of the mud flap without interruption. ECF No. 60, PageID.396.

15. The '755 Patent does not require the slotted openings to be of a size that stops all water and debris from flowing through them. ECF No. 60, PageID.398-999.

### **3. CONTROVERTED FACTS AND UNRESOLVED ISSUES**

The factual issues remaining to be determined and issues of law for the Court's determination are:

1. Whether each model of the Fleet AeroFlap product comes within the valid scope of one or more of the asserted claims 1, 2, 5, 8, 9, or 13 of the '755 Patent, including whether the AeroFlap product contains "vanes" and/or "vertically extending" channels and slotted openings as defined by the Court.
2. If Fleet is found liable for patent infringement, whether such infringement was willful.
3. If Fleet is found liable for patent infringement, what is a reasonable royalty for the RE '755 Patent.

### **4. WITNESSES**

**Non-Expert Witnesses** to be called by the plaintiff and defendant, except those who may be called for impeachment purposes only, are:

**For Plaintiff:**

Witness Name	Contact Information	Type of Testimony	Will Call / May Call	Objections
Wesley K. Eklund	May be contacted through Fleet's counsel	In person	Will Call	

**For Defendant:**

Witness Name	Contact Information	Type of Testimony	Will Call / May Call	Objections
Tarun Surti	5928 Westheimer Dr. Brentwood, TN 37027	In person	Will Call	
S. Anderson – Maker of FLEET001316 drawing		In Person	Will Call	FRCP 26; Mr. Anderson was not disclosed as a potential witness during discovery. Mr. Anderson's testimony in this matter is irrelevant.

**Expert Witnesses** to be called by the plaintiff and defendant, except those who may be called for impeachment purposes only, are:

**For Plaintiff:**

Expert Witness Name	How Testifying	Objections
Philip W. Kline	In Person	
Thomas N. Young	In Person	

Mr. Kline is a managing director at Ankura, a firm that provides subject matter experts and seasoned advisors, including services related to intellectual property expert testimony and damages testimony. Prior to joining Ankura, Mr. Kline was a Managing Director at 284 Partners, LLC ("284 Partners") – a professional services firm focused on intellectual property ("IP")

valuation, litigation consulting, IP strategy, and IP transactional services. Mr. Kline has \_\_\_\_ years of experience related to the assessment of commercial damages in matters involving intellectual property. Mr. Kline intends to provide testimony regarding the damages owed to Mr. Surti by Fleet in this case if liability is found.

Mr. Young is of counsel at Young Basile Hanlon & MacFarlane P.C., an intellectual property law firm. Mr. Young has over 50 years' experience in private practice in all aspects of intellectual property law. Mr. Young intends to provide testimony regarding the lack of infringement by Fleet of the '755 Patent and factual testimony surrounding the disclosures of prior art cited against the '755 Patent, and the prosecution history of the '755 Patent. With respect to his testimony, Mr. Young may refer to both the '755 Patent and the surrendered '949 Patent.

**For Defendants:**

Expert Witness Name	How Testifying	Objections
None	N/A	N/A

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear in the lists required by subsections (a) and (b) will be permitted to testify for any purpose, except impeachment, if the opposing party objects. Any objection to the use of a deposition under Fed. R. Civ. P. 32(a) not reflected in the Pretrial Order shall be deemed waived, except for good cause shown.

**5. DEPOSITIONS AND OTHER DISCOVERY DOCUMENTS**

All depositions, answers to written interrogatories, and requests for admissions, or portions thereof, that are expected to be offered in evidence by the plaintiff and the defendant are:

None.

**6. LENGTH OF TRIAL**

Counsel estimate the trial will last approximately 3 full days, allocated as follows: 1 day for plaintiff's case and 1 day for defendant's case, allowing for some time to select the jury and for opening statements and closing arguments.

**7. PROSPECTS OF SETTLEMENT**

The status of settlement negotiations is:

The parties attended a Settlement Conference with Magistrate Judge Green on August 19, 2021. ECF No. 335. The outcome of that conference was that no settlement agreement was reached. *Id.* No additional settlement negotiations have taken place since that date.

**IT IS SO ORDERED.**

Date: September 10, 2021

/s/ Paul L. Maloney  
Paul L. Maloney  
United States District Judge